

PT 99-28

Tax Type: PROPERTY TAX

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**BOARD OF EDUCATION
OF COMMUNITY
CONSOLIDATED SCHOOL
DISTRICT NO. 21,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 98-PT-0073
(97-16-0454)**

**Real Estate Tax Exemption for
1997 Assessment Year**

P.I.N: 03-02-316-030

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Brian Fahey of Scariano, Kula, Elch & Himes, Chtd. on behalf of the Board of Education of Community Consolidated School District No. 21.

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 03-02-316-030 should be exempt from 1997 real estate taxes under 35 ILCS 200/15-135 wherein "all property of public school districts or public community college districts not leased by those districts or otherwise used with a view to a profit" is specifically exempted from real estate taxation.

The controversy arises as follows:

The Board of Education of Community Consolidated School District No. 21 (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax)

Appeals (hereinafter the "Board") on December 23, 1997. Dept. Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the entire subject property be exempt from real estate taxes for 100% of the 1997 assessment year. Dept. Group Ex. No. 1, Doc. B.

The Department partially rejected this recommendation in a determination dated April 4, 1996. Said determination found that:

- 50% of the building¹ and a corresponding percentage of its underlying land was approved for exemption; and,
- 100% of the parking lot was also approved for exemption; but,
- 50% of the building and a corresponding percentage of its underlying land was taxable.

Dept. Group Ex. No. 2.

Applicant filed a timely request for hearing as to this partial denial on May 26, 1998 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the entire subject property and all of its underlying land be exempt from 1997 real estate taxes for 100% of the 1997 assessment year.

FINDINGS OF FACT:

A. Jurisdictional Considerations and Other Introductory Matters

1. The determination did not identify which specific 50% of the building (i.e. first or second floor) was exempt. It also failed to identify which specific 50% was taxable. Due to this omission, and because the first and second floors were used for distinct purposes (*see, infra* at pp. 9-11), neither the ALJ nor the applicant were able to discern how the exemption was to be applied. Thus, in order to alleviate any resulting confusion or ambiguity, I shall make Findings of Fact and Conclusions of Law that address the uses associated with each area of the building.

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. For present purposes, the Department's position in this matter is that 50% of the building located on the subject property and a corresponding amount of the underlying land was in exempt use during 1997 but that the remaining 50% was not.² Dept Ex. No. 2.
3. Applicant is the governing body of a public elementary (K-8) school district located within Wheeling Township. The school district's purpose is to educate all students residing within its territorial boundaries. Tr. pp. 12
4. Applicant became the successor in interest to the Trustees of Schools of Township 42 (hereinafter the "Trustees") on July 1, 1995. The terms and conditions of its succession are set forth in 105 **ILCS** 5/5-1(c). Administrative Notice.
5. On August 11, 1998, the Director of Revenue approved the Recommendation for Disposition in Docket No. 93-16-1427, a document which recognized that the Trustees qualify as a tax-exempt "public school district" within the meaning of Section 19.18 of the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.*³ This document

2. Applicant is not challenging that portion of the Department's determination which found 100% of the parking lot located on the subject property to be exempt from 1997 real estate taxes. Accordingly, I shall leave that finding undisturbed and focus the remaining Findings of Fact and Conclusions of Law on those parts of the Department's determination that affected the building.

3. The Revenue Act of 1939 was repealed *in toto* when the Property Tax Code took effect January 1, 1994. *See*, 35 **ILCS** 200/32-20.

also recognized that the entire subject property qualified for exemption from 1993 real estate taxes under Section 19.18.⁴ Administrative Notice.

6. North Cook Intermediate Service Center (hereinafter the "Center") is an instrumentality of the Illinois State Board of Education (hereinafter the "ISBE") that sets policy, approves budgets and authorizes personnel to provide services that respond to the needs of schools in northern Cook County. Applicant Ex. No. 6.

B. Applicant's History and Organizational Structure

7. Applicant's predecessor, the Trustees, were organized pursuant to the Trustees of Schools provisions⁵ found in the Illinois School Code, 105 ILCS 5/1-1 *et seq.* Administrative Notice.
8. The Trustees' primary responsibility was to maintain legal title to all school district properties pursuant to 105 ILCS 5/5-21 and 5/5-22⁶. Administrative Notice.

4. The instant case requires application of the provisions that succeeded Section 19.18, found in Section 15-135 of the Property Tax Code, because of the technical requirements that: (1) a determination of exempt or taxable status for one year is not *res judicata* for any other tax year even where ownership and use remain the same (Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App. 3d 542 (1st Dist. 1981)); and, (2) the issue of property tax exemption necessarily depends on the statutory provisions in force at the time for which the exemption is claimed (People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922)).

5. Those provisions are found in 105 ILCS 5/5-1 through and including 105 ILCS 5/5-37.

6. For a more complete description of the trustee's statutory powers, *see*, 105 ILCS 5/5-23 through 5/5-28.

9. The Trustees exercised this power until July 1, 1995, when they were abolished pursuant to 105 **ILCS** 5/5-1(c). In substance, these provisions enumerate certain procedures whereby voters in each school district, over which the Trustees retained jurisdiction, could vote to abolish the Trustees at a non-partisan election. Administrative Notice.
10. Applicant is located in Wheeling Township. The voters of that Township were subject to the Trustees' jurisdiction prior to the general election held in November of 1994. They voted to abolish the Trustees in that election. Tr. pp. 13-14.
11. Section 5-1(c) of the School Code provides, *inter alia*, that if the voters elect in favor of abolition, then legal title to all school property formerly held by the Trustees shall pass to the appropriate school board by operation of law. Administrative Notice.

C. The Center's Organizational Structure

12. The Center is an instrumentality of ISBE created pursuant to Section 2-3.62(a) of the School Code, 105 **ILCS** 5/1-1 *et seq.* Administrative Notice.
13. ISBE was, in turn, created pursuant to Article Two of the School Code, 105 **ILCS** 5/2-1 *et seq.* Its powers and duties, which are set forth in 105 **ILCS** 5/2-3 through 5/2-3.118, include, *inter alia*, determining efficient and adequate standards for the curriculum taught at, as well as the administration and supervision of, all schools subject to its jurisdiction (35 **ILCS** 5/2-3.25), establishing annual standards for assessing the performance of elementary school students in the areas of mathematics, language arts, and various sciences (35 **ILCS** 5/2-3.64), preparing a school building code (35 **ILCS** 5/2-3.12), and conducting audits of the financial

statements, accounts, funds and other moneys in the custody and control of the regional superintendent of schools of each educational service region in the state of Illinois (35 **ILCS** 5/2-3.17a). Administrative Notice.

14. The Center's functions are described in Section 2-3.62(a) of the School Code.

This provision states that the ISBE shall create:

a regional network of education service centers ... to coordinate and combine existing services in a manner which is practical and efficient to provide new services to schools as provided in this Section. Services to be made available by such centers include the planning, implementation and evaluation of:

- (1) education for gifted children through area service centers, experimental projects and institutes as provided by Section 14A-6 [of the School Code];
- (2) computer technology education including the evaluation, use and application of state of the art computer software as provided in Section 2-3.43 [of the School Code];
- (3) mathematics, science and reading resources for teachers including education, inservice training and staff development.

105 **ILCS** 5/2-3.62(a). Administrative Notice.

15. Under the terms of Section 2-3.62(a), educational service centers can also provide training, technical assistance, coordination and planning in other program areas such as school accountability, career guidance, early childhood education, alcohol/drug education and prevention, family life-sex education, electronic transmission of data from school districts to the State, alternative education and

regional special education, and telecommunications systems that provide long distance learning. Administrative Notice.

16. The Center services schools in Northern Cook County. Its jurisdiction extends to districts within the territorial boundaries of the following high school districts: Evanston Township High School District 202; New Trier Township High School District 203; Maine Township High School District 207; Township High School District 211; Township High School District 214 (with which applicant is affiliated); Niles Township Community High School District 219 and Northfield Township High School District 225. Applicant Ex. No. 6.
17. The Center also services elementary schools, such as applicant,⁷ that feed into these high school districts. Tr. pp. 25-26.
18. Section 2-3.62(d) of the School Code provides that educational service centers, such as the Center, shall be funded by ISBE grants. Administrative Notice.
19. The Center's specific sources of revenue for the fiscal year beginning July 1, 1996 and ending June 30, 1997 were as follows:

SOURCE	AMOUNT	% OF TOTAL⁸
Local Sources	\$1,140,484.00	36%
State Sources	\$1,966,738.00	63%
Federal Sources	\$ 25,426.00	1%
Total	\$3,132,648.00	

Applicant Ex. No. 8, Doc. D.

20. The Center's expenses for the same period were as follows:

7. Applicant is a feeder school for Township High School District 214. Tr. p. 26.
8. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, $\$1,140,484.00 / \$3,132,648.00 = 0.3641$ (rounded four places past the decimal) or 36%.

EXPENSE	AMOUNT	% OF TOTAL
Current:		
Instruction	\$ 4,864.00	<1%
Supporting Services	\$1,798,605.00	92%
Nonprogrammed Charges	\$ 73,000.00	4%
Capital Outlay	\$ 80,409.00	4%
Total	\$1,956,878.00	

Id.

21. The Center is subject to audit by ISBE and must return all unused grant money to the State. Tr. p. 48.

D. Location and Description of the Subject Property

22. The subject property is located at 200 Glendale Avenue, Wheeling, IL 60090 and commonly known as Hawthorne School. Dept. Group Ex. No. 1, Doc B; Tr. p. 18.
23. The subject is improved with a 30,952 square foot building. The building is divided into two floors. Each floor occupies approximately 15,476 square feet.

Id.

24. Each floor contains a series of classrooms, office space, storage facilities and bathrooms. Tr. pp. 18-19.
25. The subject property is also improved with a paved parking lot. Dept. Ex. No. 2.
26. The Department's determination found that 100% of this parking lot to be exempt from 1997 real estate taxes. *Id.*

D. Ownership and Use Issues

27. The Trustees acquired ownership of the subject property via a quit claim deed dated November 19, 1970. Applicant Ex. No. 1.

28. Applicant used the first floor of the subject property for its own purposes throughout 1997.⁹ These purposes included coordinating various technology projects, conducting student-teacher evaluations and holding curriculum review sessions. Tr. pp. 19-20.
29. Applicant confined the above uses to the first floor. It did, however, lease the entire second floor to the Center, which used the leasehold only for administrative purposes. Tr. pp. 20, 29-30.
30. Applicant's lease with the Center provided, *inter alia*, that: (1) applicant was to lease a portion of the subject property to the Center during a term beginning September 1, 1994 and ending July 1, 1995; (2) the demised portion was specifically identified as the second floor of the building located on the subject property; (3) the demised premises was to be used for the purpose of carrying on the Center's programs "and no other"; (4) the Center was to pay various sums certain¹⁰ as monthly rental throughout the term of the leasehold; and (5) the Center was pay any real estate taxes levied against the leasehold. Applicant Ex. No. 3.
31. Applicant and the Center executed an amendment of this lease on April 20, 1995. This amendment provided, *inter alia*, that: (1) the Center was afforded an option to extend the term of the lease for one additional year; (2) this year was to begin August 1, 1995 and terminate July 31, 1996; and (3) the option could be renewed for two additional years. *Id.*

9. All uses described in this and the ensuing Findings of Fact shall be 1997 uses.

10. For exact sums, *see*, Applicant Ex. No. 3.

32. The amendment effectively granted the Center an option to renew its lease for a term that encompassed the entire 1997 assessment year. The Center exercised this option to renew on May 30, 1996. *Id.*
33. Applicant determined the amount of the Center's rental payments by determining the actual annual costs associated with operating the building and approximating such costs over the term of the lease. Tr. pp. 38-39.
34. Applicant deposited all of the Center's rental payments into a fund used to defray expenses arising from operating and maintaining the subject property. These payments were not, however, sufficient to cover the actual costs that applicant incurred. Applicant Group Ex. No. 5, Doc. C; Tr. pp. 32, 34-36.
35. The Center complied with all terms of the lease, including the provision that it use the demised premises for no purpose other than administering the technological, professional development and other service programs it provided to schools within its jurisdiction. Tr. pp. 25-27; 42-43.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has submitted evidence and argument sufficient to warrant exempting the entire subject property from 1997 real estate taxes. Accordingly, under the reasoning given below, I recommend that the portion of the Department's determination which found that only 50% of said property satisfies the statutory requirements set forth in Section 15-135 of the Property Tax Code be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1 *et seq.* The provisions of the Code that govern the present case are found in 35 **ILCS** 200/15-135, wherein "all property of public school districts or public community college districts not leased by those districts or otherwise used with a view to a profit" is specifically exempted from real estate taxation.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill. 2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d

430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

This case presents a relatively unique fact pattern, one in which the applicant: (1) owned the entire subject property throughout the entire 1997 tax year; (2) used the entire first floor for school district purposes throughout the tax year in question; but (3) leased the entire second floor to the Center, which used this portion of the subject property to provide support services to accredited schools in Northern Cook county, during that same tax year.

This fact pattern may be unusual, however, it is not one of first impression in this state, for in Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court confronted a situation wherein a tax-exempt religious organization, the School Sisters of St. Francis, leased a portion of a former convent to the appellant, a tax-exempt "institution of public charity." *Id.* The Court held in favor of exempting appellant's leasehold interest. In doing so, the Court reasoned that:

It is not questioned that the activities conducted by the [appellant] Center are charitable and that if the property were owned by the Center and these activities conducted thereon [sic], it would be tax exempt. Also if Sisters were to conduct a similar operation instead of Center, it appears that the property would be tax exempt.

Olson at 334-335.

The court then distinguished cases wherein exemptions were denied because the leased properties were primarily used for the non-exempt purposes of producing income and therefore generating a profit for the owner. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill.

136 (1924); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); City of Mattoon v. Graham, 386 Ill. 180 (1944). It proceeded to argue that courts in cases such as People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 2d 363 (1944) and People ex. rel. Hesterman v. North Central College, 336 Ill. 263 (1929) allowed exemptions because "the primary use of the leased property, while yielding incidental income, was to serve a function connected with the tax-exempt purpose of the institution." Olson, *supra* at 335-336. Thus:

... We need go no further than the drawing of this distinction for the decision of this case. It is unnecessary through accounting procedures to ascertain whether Sisters actually made a profit from the leasing. That is not the test. This court has often held that it is the primary use of the property and not the ownership that determines its taxable status. [citations omitted].

We likewise consider that it is the primary use to which the property is devoted *after the leasing* which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income. Following the leasing, the primary use to which the property was devoted was serving the tax-exempt charitable purpose of the Center. This did not destroy the tax-exempt status of the leased property although the letting produced a return to Sisters.

Olson, *supra* at 336. [emphasis added].

In order to apply these principles to the present case, one must ascertain: (1) if the applicant-lessor and the Center-lessee qualify as tax-exempt entities; and (2) whether the post-leasing uses furthered one or more tax-exempt purposes. For the following reasons, I conclude that both inquiries are to be answered in the affirmative.

Applicant is the successor in interest to the Trustees of Schools of Township 42 by operation of 105 ILCS 5/5-1(c). The Department found that the Trustees qualify as "public

school district" within the meaning of the applicable exemption statute, then found in 35 **ILCS** 205/19.18, in the Recommendation for Disposition in Docket No. 93-16-1247.

Based on the above considerations, and the fact that the denial herein was based solely on lack of exempt use, I conclude that applicant is a tax-exempt entity. Therefore, it is necessary to examine the presently-applicable exemption statute, found in 35 **ILCS** 200/15-135, in order to determine whether applicant's property qualifies for exemption thereunder.

Section 15-135 states that " all property of public school districts or public community college districts not leased by those districts or otherwise used with a view to a profit" is exempt from real estate taxation. This language is fairly clear but divided into three distinctive components: first, the adjective "all" implies that the exemption is not limited to certain types of school district property, such as school or administration buildings; second, the preposition "of" connotes an ownership requirement (*see*, Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968)); and third, the only use restriction on this exemption is the prohibition on leasing or other use for profit as explained in Olson.

The quit claim deed (Applicant Ex. No. 1) establishes that applicant owned the subject property throughout the 1997 assessment year. In addition, the testimony of applicant's assistant superintendent of finance and operations, Daniel Cash, establishes that the first floor was not leased, but rather used for school district purposes (student-teacher evaluations, curriculum reviews, etc.) during that tax year. *See*, Tr. pp. 19-20. Therefore, at minimum the Department should have: (1) clarified its determination to reflect that the first floor, rather than "50%" of the building, was exempt from 1997 real estate taxes; and (2) determined the exempt status of the second floor leasehold according to the criteria set forth in Olson.

Making that determination requires me to first ascertain whether the Center qualifies as a tax-exempt entity. That inquiry is governed by Section 15-55 of the Property Tax Code, which provides that "[a]ll property belonging to the State of Illinois" is exempt from real estate taxation. Section 15-55 also requires the "State agency holding title" to file specific documentation certifying that the property qualifies for exemption. *Id.*

The question of whether a given entity qualifies as a "State agency" depends first on the degree of administrative and financial autonomy which the entity possesses under the terms of its enabling statute, and second, but most important, whether the general funds of the State can be reached in order to satisfy the entity's financial obligations. People v. The Illinois Toll Highway Commission, et al., 3 Ill. 2d 210 (1954), (hereinafter "ITHC").

The Center is a legislatively-created instrumentality of ISBE, an entity that derives its existence, authority, and status as a "State agency" from Article Two of the School Code, 105 **ILCS** 5/2-1 *et seq.* Section 2-3.62(a) of the School Code effectively allows ISBE to control the Center's activities by setting forth the types of programs and services the Center may provide to schools within its jurisdiction. Moreover, the testimony of the Center's Interim Business Manager, Joseph Monahan, establishes that ISBE also retains financial control over the Center through audit requirements. *See*, Tr. p. 48.

Furthermore, the financial statements admitted during the course of Mr. Monahan's testimony (Applicant Ex. No. 8, Doc. D) prove that the Center derives 63% of its total funding from ISBE grants. For this reason, and because the Center must return any unused grant money to the State (Tr. p. 48), it appears that most of the Center's financial obligations are paid from State funds. Therefore, pursuant to the criteria set forth in ITHC, *supra*, I conclude that the

Center qualifies as a "State agency" within the meaning of Section 15-55 of the Property Tax Code.

I further conclude that, pursuant to Olson, *supra*, the Center is a tax-exempt entity that would have qualified for exemption from 1997 property taxes if: (1) it had owned any real estate in the State of Illinois during that time and (2) actually and exclusively used any property so owned for exempt purposes.

The Center did not own any real estate in Illinois during 1997. It did, however, use its leasehold on the second floor exclusively for administering the service-oriented programs that it provided to schools within its jurisdiction. The Center also made rental payments that were calculated on a cost-based approach which ensured that applicant did not profit therefrom. For all these reasons, I conclude that the second floor would have been tax exempt if the Center owned it during 1997. Olson, *supra*. Therefore, that part of the Department's determination that denied this portion of the subject property exemption from 1997 real estate taxes should be reversed.

In summary, the entire subject property should qualify for exemption from 1997 real estate taxes, because both applicant and the Center qualify for tax-exempt status. Moreover, applicant and the Center, which were the only entities using the subject property during 1997, actually used their respective portions of the property exclusively in furtherance of some specifically identifiable tax-exempt purpose. Under these circumstances, the holding in Olson, *supra*, mandates that the Department's determination, which exempted only an unspecified "50%" of the subject property and an appropriate percentage of its underlying ground, be modified in accordance with the foregoing analysis.

WHEREFORE, for all the preceding reasons, it is my recommendation that 100% of real estate identified by Cook County Parcel Index Number 03-02-316-030, and all of its underlying land, be exempt from 1997 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge